

# WHAT IS THE SUBJECT OF PRINCIPLE 2 IN MAIMONIDES'S *BOOK OF THE COMMANDMENTS*? TOWARDS A NEW UNDERSTANDING OF MAIMONIDES'S APPROACH TO EXTRASCRIPURAL LAW

Marc Herman

In memory of Gerald Blidstein, whose careful scholarship inspired this essay

**Abstract:** *Among Maimonides's many statements about extrascriptural laws in rabbinic literature, none has attracted as much attention as principle 2 in his Book of the Commandments. Modern scholars have largely understood this text to claim that very few of the laws found in rabbinic literature are Sinaitic in origin and of biblical status. Yet, until the twentieth century, principle 2 was primarily read as distinguishing between revealed laws that constitute enumerated commandments and revealed laws that do not. In fact, neither reading is consistent with other Maimonidean statements. By contextualizing principle 2 within the Book of the Commandments, this essay reconsiders Maimonides's enumeration of the commandments and argues that many of the problems that principle 2 was designed to address, and that it also generated, resulted from the incongruity of his project of enumerating precisely 613 commandments alongside his understanding of revelation as a corpus that included not only the Written Torah but innumerable extrascriptural traditions as well. An appendix evaluates pertinent aspects of the most recent monograph dedicated to Maimonides's scriptural hermeneutics.*

Among Maimonides's many statements about extrascriptural laws in rabbinic literature, none has attracted as much attention as principle 2 in his *Book of the Commandments*. In that text, Maimonides (1138–1204) distinguished between two types of extrascriptural rules: laws that are known by way of tradition (*naql*)

This essay focuses on Maimonides's *Book of the Commandments*, though I cite apposite Maimonidean views from his other works. I use the following abbreviations for his enumeration of the commandments: prin. = principle; pos. = positive commandment; neg. = negative commandment. Translations are my own unless otherwise noted.

Conversations with Talya Fishman over many years shaped my thinking about the ideas in this essay. I thank her, Ezra Blaustein, Nicholas Harris, Chaim Ilson, and Eliyahu Krakowski for their comments, and the members of my dissertation committee for their assistance at an earlier stage of this project. An incisive conversation with Bernard Septimus stimulated me to think more carefully about the ideas in this paper. I also am grateful to Mordechai Cohen for engaging me in much discussion about principle 2. As is evident, I learned much from his oral and written teachings, despite our divergent interpretations. Finally, I thank the anonymous readers for their constructive feedback.

and laws that the rabbis generated through reasoning (*qiyās*; lit., analogy).<sup>1</sup> The Talmud, he asserted, labels the former *guf torah* (lit., essence of the Torah)<sup>2</sup> or *de-'orayta* (lit., of the Torah). Maimonides claimed that only these revealed laws should be enumerated among the 613 Sinaitic commandments; whichever laws lack either of these designations are of rabbinic status. Indeed, “most” of Jewish law, Maimonides maintained, is derived by the thirteen modes of inference (*middot*) by which the Torah is interpreted.<sup>3</sup> In a later letter to Pinḥas ben Meshulam ha-Dayyan, a Provençal émigré who served as a judge in Alexandria, Maimonides even asserted that the rabbis had only ascribed the labels *guf torah* or *de-'orayta* to “three or four” nonexplicit laws.<sup>4</sup> Following Naḥmanides (1194–1270), most modern scholars have understood Maimonides to be claiming that very few of the laws found in rabbinic literature are Sinaitic in origin and of biblical status.

Yet, until the twentieth century, principle 2 was primarily read as a text that distinguished between revealed laws that constitute enumerated commandments and revealed laws that do not.<sup>5</sup> The overwhelming majority of premodern talmudists thus rendered the terms *de-'orayta* and *de-rabbanan* (rabbinic) in this text to denote enumerated and nonenumerated commandments respectively. They construed principle 2 to preclude the enumeration of nonexplicit laws among the 613 commandments, not to say that nonenumerated laws are rabbinic in status.<sup>6</sup> (Reading this text in Hebrew translation, at least two figures mistakenly conjectured that the Aramaic words *de-'orayta* and *de-rabbanan* are mistranslations from Judeo-Arabic; in reality, these words appear in the original.)<sup>7</sup> Jacob Neubauer justifiably characterized this reading as interpreting Maimonides’s words

1. For my looser translation of *qiyās*, see Joshua Blau, *A Dictionary of Mediaeval Judaeo-Arabic Texts* [in Hebrew] (Jerusalem: Academy of the Hebrew Language, 2006), 579, s.v. *قیاس*, with reference to Maimonidean usages.

2. This term appears most prominently in M. Ḥagigah 1:8; trans. follows Martin Jaffee, *Torah in the Mouth: Writing and Oral Tradition in Palestinian Judaism, 200 BCE–400 CE* (New York: Oxford University Press, 2001), 85.

3. Yosef Qafih, ed. and trans., *Sefer ha-mizvot: Makor ve-targum* (Jerusalem: Mosad HaRav Kook, 1971), 12–15 (prin. 2).

4. Itzhak Shailat, ed. and trans., *The Letters and Essays of Moses Maimonides* [in Hebrew] (Jerusalem: Maaliyot, 1988), 2:451–54.

5. Jacob Neubauer, *Ha-Rambam 'al divre sofrim* (Jerusalem: Mosad HaRav Kook, 1956), 29–33, 48, 52–53, 81. Add the important comments of Isaac Bekhor David, *Divre 'emet* (Constantinople, 1760), 80a–85b (§9).

6. For the earliest formulations of this view, see Yoel Katan, ed., *Sefer ha-Tashbez* (Jerusalem: Mekhon Yerushalayim, 2007), 1:18–19 (§1), 1:326–28 (§151); and David Abraham, ed., *'Azharot le-Rabbenu Shelomoh ben Gavirol ve-'alav sefer zohar ha-raki'a* (Jerusalem: D. Abraham, 1987), 10–13 (introductory pagination; prin. 2); see Neubauer, *Ha-Rambam*, 32–33, 53. On the role of the earlier figure Vidal of Tolosa in reinterpreting Maimonides, see there, 30–31. This premodern claim has often been associated with the view that the phrase *divre sofrim* in Maimonides’s writings denotes biblical law, a problematic position, but it can be profitably divorced from that perspective.

7. Ḥananya ben Menahem Kazes, *Kin'at sofrim*, in David Zvi Hillman, ed., *Sefer hamitzvoth by Moses Maimonides* [in Hebrew] (Jerusalem: Shabse Frankel, 1995), 65 (prin. 2); Malakhi ben Jacob ha-Kohen, *Sefer yad Malakhi* (Livorno, 1767), 2:181b (*kelale ha-Rambam*, §22). See Chaim Heller, ed., *Maimonides' Sefer ha-Mizvoth: Ibn Tibbon's Translation* [in Hebrew] (Jerusalem: Mosad

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“against their simple meaning”;<sup>8</sup> he, Jacob Levinger, Yosef Qafih, and others have therefore concluded that Maimonides held that the preponderance of laws in rabbinic literature are the product of creative application of the *middot* by the rabbis, not Sinaitic tradition.<sup>9</sup>

The approach championed by Neubauer, Levinger, and Qafih, however, is undermined by other Maimonidean passages. For example, in his letter to Pinhas, Maimonides explicitly used the term *de-'orayta* to denote a nonenumerated law found only in the Talmud. Beyond this, in his *Mishneh Torah*, Maimonides identified scores of laws in rabbinic literature as Sinaitic in origin, designating them as received *mi-pi ha-shemu'ah* (from aural tradition) or *mi-pi ha-kabbalah* (from tradition), as Gerald Blidstein noted.<sup>10</sup> The *Commentary on the Mishnah* reveals a similar phenomenon, deploying terms like *naql* (tradition) and *tafsir marwi* (transmitted interpretation) for this purpose. Lastly, certain (somewhat unclear) references to principle 2 by Maimonides and his son Abraham (1186–1237) suggest that both used this principle to exclude revealed laws from the enumeration of the 613 commandments, not to announce that all nonenumerated laws are of rabbinic status.

In the remarks that follow, I argue that Maimonides's reference to only “three or four” cases in the letter to Pinhas rests on a distinction between the “principal” (or perhaps, principle) or “root” commandment (*asl al-mizvah*) on the one hand,<sup>11</sup> and the “parts” (*ajza*; sing., *juz*) or “instantiations” or “manifestations”

HaRav Kook, 1946), 145n10; and Jacob Levinger, *Maimonides' Techniques of Codification: A Study in the Method of Mishneh Torah* [in Hebrew] (Jerusalem: Magnes, 1965), 38n21.

8. Neubauer, *Ha-Rambam*, 2; Neubauer also suggested that Maimonides's adversaries usually understood him better than his supporters (72).

9. E.g., Neubauer, *Ha-Rambam*, 81–82; Levinger, *Maimonides' Techniques of Codification*, 38–43, 86; Yosef Qafih, “‘Mi-divre sofrim,’” in *Studies in Rabbinic Literature, Bible and Jewish History* [in Hebrew], ed. Yitzhak Gilat et al. (Ramat Gan: Bar-Ilan University Press, 1982), 251; Jay Harris, *How Do We Know This? Midrash and the Fragmentation of Modern Judaism* (Albany: State University of New York Press, 1995), 88–89; and Mordechai Z. Cohen, *Opening the Gates of Interpretation: Maimonides' Biblical Hermeneutics in Light of His Geonic-Andalusian Heritage and Muslim Milieu* (Leiden: Brill, 2011), 264–70, 287–304. For attempts to return to the leading premodern interpretation of principle 2, which I find difficult for the reasons outlined by Neubauer and others, see Shailat, *Letters*, 2:451–54 nn.; Shailat, *Hakdamot ha-Rambam la-mishnah* (Jerusalem: Maaliyot, 1992), 99, 102n20; and Hanina Ben-Menahem, “Maimonides' Fourteen Roots: Logical Structure and Conceptual Analysis,” *Jewish Law Annual* 13 (2000): 20–25. Note the uncertainty about the phrase *divre sofrim* in David Weiss Halivni, *Peshat and Derash: Plain and Applied Meaning in Rabbinic Exegesis* (New York: Oxford University Press, 1991), 83–88.

10. Gerald Blidstein, “Tradition and Institutional Authority—On Oral Law in Maimonides” [in Hebrew], *Da'at* 16 (1986): 17.

11. Qafih, *Sefer ha-mizvot*, 22 (prin. 7). The Arabic *asl* denotes either the most important rule within a commandment-unit or the essence of a commandment-unit; for this reason I am unsure whether the translation “principal” or “principle” is more appropriate. On Maimonides's use of this term, see Sarah Stroumsa, *Maimonides in His World: Portrait of a Mediterranean Thinker* (Princeton, NJ: Princeton University Press, 2009), 55, 58–59, 64, 67, 70, 82–83; Herbert Davidson, “Maimonides and the Almohads,” in *Interpreting Maimonides: Critical Essays*, ed. Charles Manekin and Daniel Davies (Cambridge: Cambridge University Press, 2019), 12–15; and Ezra Blaustein, “Cataloging

(*fiqh*)<sup>12</sup> of a commandment on the other. Although the *Book of the Commandments* never really explains what constitutes a “principal commandment,” whenever he listed multiple laws under the heading of a single commandment in that work, Maimonides almost invariably based what might be considered the primary law on a scriptural verse and ascribed other laws, found not only in Scripture but also in rabbinic literature, to revelation. The latter might be considered “parts” of what Gerald Blidstein termed “commandment-units.”<sup>13</sup> Maimonides himself used a variety of Arabic terms to refer to these “parts,” and in this essay, I refer to them using words like *law* and *rule*. Awareness of Maimonides’s attention to such legal “details” in the *Book of the Commandments* helps clarify the arguments of principle 2, which I contend concerned “principal commandments” and not nonenumerated legal “details.” I therefore reconsider this principle within the context of the *Book of the Commandments*, and, to a lesser extent, within the broader Maimonidean oeuvre.

This study’s contextual reading of principle 2 spotlights Maimonides’s distinction between cases where in his view the rabbis actively created law and cases where they found exegetical support for laws that they knew by way of tradition. This distinction enabled Maimonides to sort laws in rabbinic literature into two classes, God-given and man-made. Teasing apart the categories of enumerated commandments and nonenumerated divine rules enables me to account for both the “three or four” exceptional cases that Maimonides mentioned to Pinḥas and for the divine authority behind nonenumerated “details” included in “tradition” or the “transmitted interpretation” in Maimonidean thought.<sup>14</sup>

I treat five themes in order to reassess Maimonides’s approach to extrascriptural law. I first explore the consequences of Maimonides’s twice-stated preference to base the 613 commandments on scriptural verses. I then tease out tensions between principle 2 and the claims about revelation in Maimonides’s earlier *Commentary on the Mishnah*. Next, I show that Maimonides’s letter to Pinḥas blurs the line between enumerated commandments and nonenumerated “details” of commandments. Fourth, I draw attention to cases in the *Book of the Commandments* where Maimonides identified extrascriptural laws that were not included in the count of the 613 commandments but were known through revelation. Having

Revelation: Echoes of Islamic Legal Theory in Maimonides’ *Sefer ha-Mitsvot* (Book of Commandments)” (PhD diss., University of Chicago, 2019), 53–101.

12. Note the rare plural, *fiqhīyāt*; Qafīh, *Sefer ha-mizvot*, 26 (prin. 7); highlighted by Blau, *Dictionary*, 512, s.v. فقهيات. On the word *fiqh* here, see Marc Herman, “Systematizing God’s Law: Rabbanite Jurisprudence in the Islamic World from the Tenth to the Thirteenth Centuries” (PhD diss., University of Pennsylvania, 2016), 255–59.

13. I borrow this term from Gerald Blidstein, “Where Do We Stand in the Study of Maimonidean Halakhah?,” in *Studies in Maimonides*, ed. Isadore Twersky (Cambridge, MA: Harvard University Center for Jewish Studies, 1990), 14, who called the commandments in the *Book of the Commandments* “mizvah-units.” Maimonides addressed principles 7 and 9–14 to the distinction between “principal” commandments and “details”; see Herman, “Systematizing God’s Law,” 252–72. For examples of this phenomenon, see below.

14. The categories of *de-’orayta* and *de-rabbanan*, by contrast, are not central to Maimonides’s Judeo-Arabic presentations of revelation.

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emphasized the distinction between those revealed laws that constitute enumerated commandments and those that do not, I argue that both Maimonides and his son Abraham understood principle 2 to be concerned only with enumerated commandments and not with extrascriptural law as a whole. I conclude by offering preliminary thoughts about the ways that Maimonides ascertained Sinaitic traditions in rabbinic literature.

### THE PLACE OF SCRIPTURE IN MAIMONIDES'S ENUMERATION OF THE COMMANDMENTS

Maimonides emphasized that Scripture was the source of the enumerated commandments in two brief passages near the outset of the methodological prologue of the *Book of the Commandments*. In the introduction to this work, he asserted, “the sum of the commandments [*jumlat al-miṣvot*] that are contained in the Torah [*yashtamil ‘alayhā sefer ha-torah*] ... is 613.”<sup>15</sup> And in principle 1, he wrote that the 613 commandments are “comprised entirely of pentateuchal verses [*nuṣūṣ torah*]; there is nothing in [this count] that is rabbinic in status [*mi-de-rabbanan*].”<sup>16</sup>

Yet, as mentioned, principle 2 concedes that some enumerated commandments are based on extrascriptural tradition and not on Scripture, and many of the 613 “commandment-units” list rules that are not found in Scripture. As I understand it, the above statements constitute Maimonides's guiding rule, and principle 2 addresses exceptions, that is, those enumerated commandments that lack scriptural support. Furthermore, Maimonides's preference for scriptural proof texts must be limited to the so-called “principal commandments,” not to Sinaitic “details”; otherwise, the claim that principle 2 applies to “three or four” commandments would be a wild underestimation, as I show below.

### PROBLEMATIC STATEMENTS IN PRINCIPLE 2

Twelve of the fourteen principles in the *Book of the Commandments* begin with unequivocal statements about the categories of laws to be included in or excluded from the enumeration of the 613 commandments. (To name two examples: principle 1 excludes rabbinic “commandments” from the count and principle 3 excludes temporary commandments from the count.) By contrast, principle 2 opens with this circuitous heading:<sup>17</sup> “It is not proper to count everything known through one of the thirteen modes of inference by which the Torah is interpreted or by a redundancy [*ribbuy*].”<sup>18</sup> Although formulated in the negative, this statement implies that some laws found only in rabbinic literature (and not in the Bible) may, in fact, constitute discrete commandments. In other words,

15. Qafih, *Sefer ha-miṣvot*, 7 (intro.).

16. *Ibid.*, 12 (prin. 1).

17. See Cohen, *Opening the Gates of Interpretation*, 288.

18. Qafih, *Sefer ha-miṣvot*, 12 (prin. 2); trans. follows Cohen, *Opening the Gates of Interpretation*, 288, with some changes. The other exception is principle 14, “how” to enumerate punishments among the positive commandments.

Maimonides did not regard the entire body of laws found in rabbinic literature as a homogenous unit. From his perspective, certain *middot*-based laws constitute commandments to be enumerated among the 613, others nonenumerated divine law, and others still rabbinic law.

Invoking the introduction to the *Commentary on the Mishnah*, composed in the previous decade, Maimonides explained that “most” of Jewish law is derived (*yustakhrāj*) by means of the *middot*. He declared, however, that a reference to the *middot* in rabbinic literature does not prove that the rabbis had generated a given law because, he maintained, the rabbis had employed the *middot* not only to produce new law but also to discover hints to the interpretation of Scripture that were “transmitted” by Moses himself. In his earlier work, Maimonides had stated that the *tafsīr marwī* consists of “meanings of ambiguous expressions” (*jumal ma’ānin*)<sup>19</sup> in Scripture. As a prototypical example, he mentioned the requirement to “dwell” in booths (Lev 23:42). According to Maimonides, when God revealed this command to Moses, He also explained who is required to dwell in the booth, how it should be constructed, and what “dwelling” entails. Maimonides posited that this procedure occurred for each of the 613 commandments.<sup>20</sup> These interpretations of Sinaitic origin were never subject to debate, he wrote, but the rabbis could disagree about their hints in Scripture. For this reason, a given law in rabbinic literature may be either of divine or rabbinic origin.<sup>21</sup>

How, then, can one distinguish the Sinaitic material from the non-Sinaitic material in rabbinic literature? In principle 2, Maimonides linked the discernment process to the enumeration of the commandments:

19. See Shailat, *Hakdamot ha-Rambam*, 27n3, 327n2. In Islamic legal theory, *jumal* (sing. *jumla*) and *mujmal* denote texts that require interpretation. Note similar Maimonidean uses; Shailat, *Hakdamot ha-Rambam*, 340; Yosef Qafih, ed. and trans., *Mishnah ‘im perush Rabbenu Moshe ben Maimon* (Jerusalem: Mosad HaRav Kook, 1963–1968), 2:175 (M. Pesaḥim 4:6). Maimonides also used the phrase *jumal ma’ānin* or *jumal al-ma’ānī* to denote “groups of matters”; Qafih, *Sefer ha-mizvot*, 337 (neg. 349); Qafih, *Mishnah ‘im perush*, 5:341 (M. Keritot 1:1). On *mujmal* in Islamic legal theory see Robert Brunschvig, “Le livre de l’ordre et de la défense’ d’al-Muzani,” *Bulletin d’études orientales* 11 (1945): 164n1; and Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunnī Uṣūl al-Fiḥ* (Cambridge: Cambridge University Press, 1997), 193–95. For a proposed link between these two denotations of the root *j-m-l*, see Joseph Lowry, *Early Islamic Legal Theory: The Risāla of Muḥammad ibn Idrīs al-Shāfi‘ī* (Leiden: Brill, 2007), 106nn79–80.

20. Shailat, *Hakdamot ha-Rambam*, 327–28. Some have detected contradictions between Maimonides’s legal and philosophical works regarding the *tafsīr marwī*; Salomon Monk, *Le guide des égarés: Traité de théologie et de philosophie* (Paris: A. Franck, 1866), 3:313–14n1, 3:334–35n4; Jacob Levinger, “The Oral Law in Maimonides’ Thought” [in Hebrew], *Tarbiz* 37, no. 3 (1968): 282–93, reprinted as “Ma’amadah shel ha-torah she-be-khtav be-maḥshevet ha-Rambam,” in *Bible and Us* [in Hebrew], ed. Uriel Simon (Tel Aviv: Dvir, 1979), 120–32; Levinger, *Maimonides as Philosopher and Codifier* [in Hebrew] (Jerusalem: Mosad Bialik, 1989), 56–66. I prefer the view set forth in Gerald Blidstein, “My Actual Purpose Is to Give Explanations to the Scriptures and Not to the Halakhot’—Indeed?” [in Hebrew], in *Carmi Sheli: Studies on Aggadah and Its Interpretation*, ed. Arnon Atzmon et al. (New York: Touro College Press, 2012), 47–55. Either way, Monk and Levinger would likely accept that Maimonides sought to present a coherent view in his legal works.

21. Qafih, *Sefer ha-mizvot*, 12–13 (prin. 2).

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This is the correct procedure [*fal-wajh*]<sup>22</sup> whenever you find that a matter is not a verse [*naṣṣ*; or, explicit text] in the Torah, yet the Talmud deduces it [*ta'allamahu*] through one of the thirteen *middot*. If they [i.e., the sages] themselves clarified and said that this [matter] is *guf torah* or *de-'orayta*, then it is proper to count it, since the transmitters [*al-rāwīyīn*; i.e., the rabbis] said that it is *de-'orayta*. But if they did not clarify this or did not state it expressly, then it is of rabbinic status [*de-rabbanan*], since there is no verse indicating [*yadullu*] it.<sup>23</sup>

Similarly, at the end of principle 2, he asserted:

This clarifies for you that even [derived laws of] Moses's day are termed *scribal specifications* [*dikduke sofrim*], because anything that was not explicitly heard [*bi-bayān*] at Sinai<sup>24</sup> is *mi-divre sofrim* [lit., from the words/matters of the scribes]. This clarifies that the 613 commandments that were said to Moses at Sinai did not include among them all that was deduced through one of the thirteen *middot*, even in his [i.e., Moses's] time,<sup>25</sup> not to mention counting anything that was derived [*ustukhrija*] later. Rather, anything that is a transmitted interpretation [*tafsīr marwī*] is counted [among the 613 commandments], that is, if the transmitters [*nāqilīn*] clarify and say that performing this matter is forbidden and that its prohibition is *mi-de-'orayta*. Or they say that it is *guf torah*. [Then] it is counted [among the 613 commandments] because it is known by means of tradition [*bil-naql*] and not by means of reasoning [*bil-qiyās*]. However, reasoning and deriving proofs [*al-istidlāl*] [for a nonexplicit commandment] through one of the thirteen *middot* were mentioned regarding it [i.e., this transmitted interpretation] in order to demonstrate the wisdom of Scripture [*al-naṣṣ*].<sup>26</sup>

These programmatic statements clarify (or may even modify) Maimonides's assertions in the *Commentary on the Mishnah* in three ways: (1) The only laws that are biblical in status are those that are based on Scripture or the *tafsīr marwī*;<sup>27</sup> (2) when the rabbis used the *middot* to create a new law, that law is of rabbinic status; and (3) only Scripture or the *tafsīr marwī* may serve as the basis for an enumerated commandment.<sup>28</sup>

22. See Blau, *Dictionary*, 752, s.v. אָפּוּס.

23. Qafīh, *Sefer ha-mizvot*, 13 (prin. 2); trans. follows Cohen, *Opening the Gates of Interpretation*, 289, with some changes.

24. *Bi-bayān* may denote pentateuchal passages; compare other definitions of (*mi-*)*divre sofrim*; Qafīh, *Mishnah 'im perush*, 6:162 (M. Kelim 17:2), 6:563 (M. Mikva'ot 6:7); Shailat, *Letters*, 2:453 (I treat this passage below). Note the broad makeup of the category of *divre sofrim* laws in *Mishneh Torah*, *hilkhot tum'at met* 19:6.

25. For Maimonidean sources on Moses as the author of rabbinic or derived laws, see Herman, "Systematizing God's Law," 159n576.

26. Qafīh, *Sefer ha-mizvot*, 15 (prin. 2).

27. Noted in Cohen, *Opening the Gates of Interpretation*, 288.

28. This last claim is certainly implicit in the outset of the introduction to the *Commentary on the Mishnah*.

Maimonides's equation of the enumerated commandments with biblical law does not account for the archetypal instance of laws based on the *tafsīr marwī*, that is, the claim that God disclosed how to construct the booth of Leviticus 23:42. In fact, his enumeration of the commandments only includes one overarching commandment to dwell in the booth.<sup>29</sup> And although the rabbis did not label the laws covering the construction of the booth *guf torah* or *de-'orayta*, there is no evidence that Maimonides believed these rules to be rabbinic in status. The difficulty of matching the programmatic statements of principle 2 with his definition of the *tafsīr marwī* in the *Commentary on the Mishnah* highlights that principle 2 offers a polarity that renders every law either an enumerated commandment and biblical in status or a nonenumerated law and rabbinic in status. Where do extra-scriptural laws based on the *tafsīr marwī* fit into this categorization?

In addition, many of the principles in the *Book of the Commandments* distinguish enumerated commandments from nonenumerated "details," for example, principle 7 excludes "instantiations" or "manifestations" of commandments from the 613 commandments and principle 11 excludes "parts" of commandments from the enumeration. Maimonides mostly focused on explicit scriptural mandates that do not constitute discrete commandments in these principles, for example, each of the four species (Lev 23:40) constitutes "part" of a larger commandment.<sup>30</sup> But these principles also exclude certain *tafsīr*-based "parts" from the enumeration.<sup>31</sup> If principle 2 had already removed all revealed laws from the enumeration, as Neubauer and others would have it, why would Maimonides need to mention such rules in later principles? In short, a nonenumerated law may be based on the *tafsīr marwī* or even Scripture itself, so the nonenumeration of a rule can hardly establish its rabbinic origin.

If so, why did Maimonides state that nonenumerated laws are of rabbinic status in principle 2? As is evident from his use of the Arabic words *fiqh* and *ajzā'*, he deployed a specialized Arabic vocabulary to denote nonenumerated laws of biblical status. He did not develop comparable Hebrew or Aramaic terms, however, in part because he was less anxious to distinguish between enumerated and nonenumerated Sinaitic laws in his Hebrew *Mishneh Torah*.<sup>32</sup> Perhaps the focus on the Aramaic word *de-'orayta* in principle 2 led Maimonides to use the opposing term, *de-rabbanan*, to denote nonenumerated laws, even if the rabbis' failure to label a law *guf torah* or *de-'orayta* is insufficient evidence to determine whether that rule is Sinaitic. In fact, Maimonides referred to both enumerated commandments and one law that is neither an enumerated commandment nor found in Scripture as "from the Torah" (*min ha-torah*) in his letter to Pinḥas, underscoring the inadequacy (or maybe, inconsistency) of his Hebrew lexicon.

29. Qafīh, *Sefer ha-mizvot*, 144 (pos. 168).

30. *Ibid.*, 43–44 (prin. 11).

31. *Ibid.*, 40, 50 (prin. 9, prin. 14).

32. Levinger, *Maimonides' Techniques of Codification*, 78–87, treated the relevant passages in the *Mishneh Torah*. The distinction between revealed laws that are enumerated and revealed laws that are nonenumerated is not pressing in a legal compendium.



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### MAIMONIDES'S LETTER TO PINḤAS BEN MESHULLAM HA-DAYYAN

What might be called the “most authentic commentary” on principle 2 appears in Maimonides's Hebrew letter to Pinḥas ha-Dayyan.<sup>33</sup> Among other queries, Pinḥas had posed two questions to Maimonides concerning the *Mishneh Torah*'s rulings on the effectuation of marriage. First, why did Maimonides classify the ability to transact marriage through the exchange of money as *mi-divre sofrim*, “from the words/matters of the scribes”? (Both Pinḥas and Maimonides understood this term to designate laws of rabbinic status.) And second, why did Maimonides consider marriages executed through a legal document (*shetar*) to be of biblical status (*min ha-torah*), given that, in Pinḥas's reading, the Talmud derives both mechanisms from the Torah (*yalfinan min ha-torah*)?<sup>34</sup> Addressing the first question, Maimonides wrote:

The response, in brief, is that I have an Arabic composition about the enumeration of the commandments. ... In its introduction are fourteen chapters, which contain important principles about the fundamentals of the enumeration. ... In those chapters I explained that not every matter [*'ein kol davar*] that is derived by analogy [*hekkesh*], a fortiori argument [*kal va-homer*], analogy from verbal congruity [*gezerah shavah*], or any of the thirteen modes of inference [*middot*] by which the Torah is interpreted is biblical law [*din torah*], unless the sages explicitly say that it is of biblical status [*min ha-torah*]. ... And there I clarified ... that even a matter designated “a law given to Moses at Sinai” [*halakhah le-Moshe mi-Sinai*] is termed “from the words/matters of the scribes” [*mi-divre sofrim*]. Nothing is of biblical status except for what is explicit [*meforash*] in the Torah, such as mixtures of linen and wool, intermixing of species, the Sabbath, and forbidden sexual unions, or something that the sages said is from the Torah—and these are only three [or] four things.<sup>35</sup>

33. Leo Strauss, *Persecution and the Art of Writing* (Chicago: The University of Chicago Press, 1988), 73, 124, described the relationship of *The Treatise on Resurrection* to the *Guide of the Perplexed* in this manner.

34. Pinḥas's query does not survive, but Maimonides paraphrased or quoted it; Shailat, *Letters*, 2:451.

35. *Ibid.*, 2:451–54; some manuscripts read “three or four.” Translation mostly follows Cohen, *Opening the Gates of Interpretation*, 7, except that Cohen has “no matter” for *'ein kol davar*, a translation that reinforces his interpretation of principle 2. My translation of this phrase accords with that of Joel Kraemer in his English edition of Maimonides's letters now in preparation, with the collaboration of Zvi Stampfer, for publication in the Yale Judaica Series. I thank Ivan Marcus and Zvi Stampfer for allowing me to consult this text.

Maimonides changed his mind about the status of the ability to transact marriage through document or monetary exchange. In an early version of the *Commentary on the Mishnah*, he wrote that only the ability to execute marriage through intercourse is of biblical status (*de-'orayta*), but he changed this text to describe this mechanism as “the clearest method” (*wajh abyan*), implying that one or both of the other mechanisms are also biblical. The letter to Pinḥas appears to reflect a second stage of his thinking, when he considered the execution of marriage through intercourse and document exchange to be of biblical status, but the exchange of money of rabbinic status. Late emendations to the *Mishneh Torah* consider all three to be biblical. See Neubauer, *Ha-Rambam 'al divre sofrim*, 153–54; Qafih,

At first glance, Maimonides's contrast between "explicit" laws and *middot*-based laws in order to explain that the transaction of marriage through the exchange of money is of *divre sofrim* status gives the impression that he held all nonenumerated laws to be of rabbinic status.<sup>36</sup> However, closer analysis leads to a finer understanding of his reference to the opening principles in the *Book of the Commandments*. Maimonides's use of the classification *mi-divre sofrim* to describe marriage effected through the exchange of money may relate to one of three assertions in principle 2: (1) only explicit, enumerated laws are biblical in status; (2) nonexplicit, nonenumerated laws are rabbinic in status; or (3) "anything that was not explicitly heard at Sinai is *mi-divre sofrim*." Emphasis on the phrase *mi-divre sofrim* in this letter points to the third claim as the most likely candidate. Moreover, even if this legal mechanism was based on an explicit verse, it would probably only constitute "part" of a larger commandment-unit to enter into marriage, much like the ability to execute marriage through document exchange that Maimonides subsumed under the heading of this commandment. (Perhaps this is what he neglected in this "brief" answer.)<sup>37</sup> Accordingly, this letter does not reiterate the problematic idea that nonenumerated laws are necessarily of rabbinic status.

Maimonides's letter to Pinḥas provides the crucial information that only "three or four" laws for which there is no scriptural verse are nonetheless biblical in status. Is this phrase intended to convey a rough estimate? If not, does it refer to a set of discrete commandments or to a set of nonenumerated laws, that is, details of commandments? Maimonides's explanation for his distinction between the effectuation of marriage through monetary exchange and the effectuation of marriage through legal documents does not shed light on these problems. He wrote that although the sages had derived both legal instruments, the second of these must be biblical in status (*min ha-torah*), given the talmudic ruling that an adulteress whose marriage was effected by a document is liable for capital punishment (B. Kiddushin 9a). That being the case, he reasoned, such a marriage must be biblical in status since capital punishment is only imposed for the violation of biblical laws.<sup>38</sup>

Assuming, against at least one scholar,<sup>39</sup> that Maimonides used the phrase "three or four" with some degree of precision, this letter does not clarify

*Sefer ha-mizvot*, 14 (introductory pagination), 167–68n17; Qafih, *Mishnah 'im perush*, 3:280–81n15 (M. Kiddushin 1:1); Qafih, *Sefer Mishneh Torah* (Kiryat Ono: Mekhon Mishnat ha-Rambam, 1987), 7:13–15, 7:17–21; Qafih, "Mi-divre sofrim," 250–52; and Ezra Chwat, "Ha-milah ha- aḥaronah shel Rambam, sefer nashim," *Giluy Milta B'Alma* (blog), February 28, 2003, [imhm.blogspot.com/2013/02](http://imhm.blogspot.com/2013/02).

36. An anonymous reader wondered if this letter addresses scriptural hermeneutics alone and not the enumeration of the commandments, an interpretation that I find unlikely given that Maimonides referred Pinḥas to the *Book of the Commandments*. Another reader suggested that this letter is a late-in-life justification that glosses over changes between the *Book of the Commandments* and the *Mishneh Torah*. I prefer to reconcile Maimonides's letter to Pinḥas with the *Book of the Commandments*, as I show below.

37. Qafih, *Sefer ha-mizvot*, 167 (pos. 213); in truth, I am unsure if the latter mechanism is a "part" or a *fiqh* of this commandment-unit or some other category.

38. Shailat, *Letters*, 2:454; on this assumption, see below.

39. Avraham Feintuch, "Ha-munah 'de-'orayta' ve-ha-middot she-ha-torah nidreshet ba-hen: 'Iyyun ḥozer ba-shoresh ha-sheni," *Sinai* 119, no. 3–4 (1997): 154–60; Feintuch, *Sefer ha-mizvot*

whether the ability to transact marriage through document exchange constitutes one of the “three or four things.” Several scholars have identified three commandments that lack scriptural support in the *Book of the Commandments*.<sup>40</sup> In one case, Maimonides wrote that although the Talmud precludes an uncircumcised priest from eating heave offerings (*terumah*) based on a *gezerah shavah*, the “transmitters” (*nāqilin*) labeled this law *de-’orayta* (B. Yevamot 72a).<sup>41</sup> In a second, he noted that the prohibition against drinking wine used in idolatrous worship lacks a “plain, explicit verse” (*naṣṣ jalī bi-bayān*),<sup>42</sup> yet the Talmud lists this law among the biblical prohibitions (*’issurim she-ba-torah*; B. Avodah Zarah 73b).<sup>43</sup> And in a third, he wrote that while “Scripture was silent” about the prohibition against father-daughter incest as it is “clear ... and self-evident,” this prohibition may be derived through a *gezerah shavah* and the Talmud considers it one of the *gufe torah* (B. Keritot 5a).<sup>44</sup> If Maimonides was thinking of a fourth commandment, it was probably the ruling that an impure priest who has undergone ritual immersion but was still awaiting full purification at sunset (*tevul yom*) is prohibited from serving in the Temple. He explained that the scriptural source (Lev 21:6) for this prohibition is not “clear” (*bayyin*) and that it is, in fact, taught by the *tafsīr marwī* and that the rabbis counted it among the laws

*le-Rambam ’im perush pikude yesharim* (Jerusalem: Maaliyot, 2010), 1:38–45. Cohen, *Opening the Gates of Interpretation*, 340n161, suggested that Maimonides wrote this responsum from memory or that “three or four” denotes “a few.”

40. Levinger, *Maimonides’ Techniques of Codification*, 41; Shailat, *Letters*, 2:451–54 nn.; Herbert Davidson, *Moses Maimonides: The Man and His Works* (New York: Oxford University Press, 2005), 176n219; Dror Fixler, “Ha-munaḥim ha-hilkhatiyim be-mishnat ha-Rambam,” in *Mibirkat Moshe: Maimonidean Studies in Honor of Rabbi Nachum Eliezer Rabinovitch* [in Hebrew], ed. Zvi Heber and Carmiel Cohen (Ma’aleh Adumim: Maaliyot, 2011), 1:288–90; Cohen, *Opening the Gates of Interpretation*, 340. Levinger (there, 41n35) suggested that the commandment to enter a marriage may constitute another exception because Maimonides only identified a scriptural “hint” (*tanbīh*) to it, not an explicit verse. This use of the word *tanbīh* is not unique, however; compare Qafih, *Sefer ha-mizvot*, 110, 250 (pos. 95, neg. 153). For another proposed exception, see Albert Friedberg, *Crafting the 613 Commandments: Maimonides on the Enumeration, Classification and Formulation of the Scriptural Commandments* (Boston: Academic Studies Press, 2013), 125–26n68. David Henshke, “The Basis of Maimonides’ Concept of Halacha” [in Hebrew], *Shenaton ha-mishpat ha-’ivri* 20 (1997): 126–28, claimed that “three or four” refers to entries in the “Short Enumeration of the Commandments” at the outset of the *Mishneh Torah*. I find this unlikely, in part for the reasons outlined in Fixler, “Ha-munaḥim ha-hilkhatiyim,” 288n8. Ben-Menahem, “Maimonides’ Fourteen Roots,” 22n21, dismissed the relevance of this letter altogether.

41. Qafih, *Sefer ha-mizvot*, 242–43 (neg. 194). Compare Qafih, *Mishnah ’im perush*, 3:32–33 (M. Yevamot 8:1); the Short Enumeration, neg. 135; and *Mishneh Torah*, *hilkhot terumot* 7:10. See Abraham Allegri, *Lev sameah*, in Hillman, *Sefer hamitzvoth*, 75 (prin. 2).

42. Compare *naṣṣ jalī* in Qafih, *Sefer ha-mizvot*, 328 (neg. 318), and Abraham Maimonides’s use of this phrase; Beer Goldberg, ed., *Maasé nissim ou questions de R. Daniel le Babli sur le livre des préceptes de Maimonide* [in Hebrew] (Paris: A. Wittersheim, 1867), 6, 9 (§1).

43. Maimonides equated this phrase with the term *de-’orayta*; Qafih, *Sefer ha-mizvot*, 276 (neg. 194); contrast Qafih, *Mishnah ’im perush*, 6:20 (intro. to M. Kelim). Compare the Short Enumeration, neg. 25, neg. 194. On the phrase *’issurim she-ba-torah*, note Qafih, *Sefer ha-mizvot*, 242–43n97.

44. Qafih, *Sefer ha-mizvot*, 333–34 (neg. 336); see *Mishneh Torah*, *Hilkhot ’issure bi’ah* 2:6; and Cohen, *Opening the Gates of Interpretation*, 340–42.

whose violation incurs capital punishment.<sup>45</sup> (This latter case might explain Maimonides's tentative formulation, "three or four," because understanding its supporting verse requires the Sinaitic *tafsir marwi*.) It is probably not coincidental that these exceptional cases are all negative commandments, because Maimonides insisted that there is a one-to-one correspondence between the number of punishments that a sinner incurs and the number of negative commandments that he violates.<sup>46</sup> If so, Maimonides needed to enumerate these prohibitions as distinct commandments in order to account for the fact that the rabbis imposed biblically mandated punishment for violation of these nonexplicit laws.

This analysis precludes the possibility that the ability to transact marriage through document exchange constitutes one of the "three or four things." Indeed, neither the *Book of the Commandments* nor rabbinic literature labels this law *de-'orayta*, *guf torah*, or anything similar. Yet Maimonides considered this legal mechanism to be of biblical status, despite its lack of explicit scriptural support and his choice not to count it as a distinct commandment; these were the very criteria that he set forth in principle 2 as evidence of a law's rabbinic status!<sup>47</sup> As it turns out, the neat division between explicit, enumerated commandments of biblical status and nonexplicit, nonenumerated laws of rabbinic status cannot be sustained, for it is undermined by cases in the *Book of the Commandments* where Maimonides ascribed nonenumerated, nonexplicit laws (i.e., details) to Sinaitic tradition.

#### NONEXPLICIT AND NONENUMERATED LAWS IN THE *BOOK OF THE COMMANDMENTS*

The classification of numerous nonexplicit, nonenumerated laws in the *Book of the Commandments* as Sinaitic traditions supports my conclusion that principle 2 deals solely with discrete commandments that are exceptions to Maimonides's rule that all of the 613 commandments must be based on Scripture. Maimonides used the overlapping terms *tafsir marwi*, transmitted interpretation, and *naql*, tradition, to denote extrascriptural interpretations of revelation or nonexplicit, revealed legal details that he deemed to be of Sinaitic origin.<sup>48</sup> Each of the following

45. Qafih, *Sefer ha-mizvot*, 221 (neg. 76); compare Qafih, *Mishnah 'im perush*, 4:195 (M. Sanhedrin 9:6), noted in Kazes, *Kin'at sofrim*, 83 (prin. 2); and *Mishneh Torah*, *hilkhot bi'at ha-mikdash* 4:4. Levinger, Davidson, and Fixler mentioned this commandment as a candidate for one of the "three or four things."

46. See, e.g., Qafih, *Sefer ha-mizvot*, 34–36, 232, 254 (prin. 9, neg. 103, neg. 161); contrast there, 296 (neg. 242). *Guide of the Perplexed*, 2:46, appears to ignore this idea; see Levinger, *Maimonides as Philosopher*, 177; and Yosef Qafih, ed. and trans., *Moreh nevukhim* (Jerusalem: Mosad HaRav Kook, 1972), 267–68n16. Note that in the second discussion of the terms *de-'orayta* and *guf torah*, Maimonides focused only on prohibitions; Qafih, *Sefer ha-mizvot*, 15 (prin. 2).

47. Compare Levinger's attempt, unconvincing in my opinion, to reread the term *de-'orayta* in another instance; *Maimonides' Techniques of Codification*, 43, 80.

48. The roots *b-y-n* (to explain) and *sh-r-h* (to interpret) also occasionally denote Sinaitic material; Qafih, *Sefer ha-mizvot*, 77, 162–63, 182, 297 (pos. 34, 205, neg. 4, 245). The phrase "by way of interpretation" (*fi sharh*) describes rabbinic exegesis; there, 69, 173, 229 (pos. 20, 334, neg. 247);

examples are rules that he based on revelation but do not constitute distinct commandments: (1) Based on *naql*, one must refrain from washing, anointing, wearing shoes, and marital relations on the Day of Atonement; Maimonides included these rules in the commandment-unit to fast on that day.<sup>49</sup> (2) *Naql* teaches that a sage may facilitate the release from vows (*hatarat nedarim*); he included this in the commandment-unit pertaining to the nullification of vows (*hafarat nedarim*).<sup>50</sup> (3) The *tafsir* includes a rule that a priest who offers a sacrifice without wearing priestly garments desecrates it; Maimonides concluded that this rule—which he placed with the commandment to wear the priestly garments—lacks a corroborating verse.<sup>51</sup> (4) *Naql* includes a requirement to set apart all impure individuals; Maimonides grouped this requirement under the scriptural mandate to separate one afflicted with *zara'at* (“skin disease”; Lev 13:45).<sup>52</sup> (5) *Naql* and *tafsir* teach that the consecration of new months is effective even if the court errs regarding the date of the new moon's appearance; this rule appears as part of the commandment to consecrate new months.<sup>53</sup> (6) *Tafsir* glosses the word “over

and “interpreters” (*shāriḥīn*) denotes the rabbis; there, 33 (prin. 9). Contrast the designation of Targum Onkelos as “the interpreter according to the tradition” (*al-shāriḥ lil-naql*); there, 238 (neg. 128). *Naql* sometimes carries broader signification than *tafsir marwī*, denoting traditions that do more than explain ambiguous scriptural statements. For the equivalence of these terms, see, e.g., there, 206–7, 246–48 (neg. 50, 144–48).

49. Qafīḥ, *Sefer ha-mizvot*, 143 (pos. 164); on the third of these prohibitions, see there, n. 18. In the *Commentary*, he referred to derivations of these prohibitions (B. Yoma 76a–77b) as “hints and proof texts” (*ishārāt wa-isnādāt*); Qafīḥ, *Mishnah 'im perush*, 2:262–63 (M. Yoma 8:1). A small change to the *Commentary*, noted there, n. 10, may be of some significance. According to *Mishneh Torah*, *hilkhot shevitat 'asor* 1:5, these prohibitions are known *mi-pi ha-shemu'ah*.

50. Qafīḥ, *Sefer ha-mizvot*, 110 (pos. 95). The *Commentary* also uses the term *naql*, adding, “there is no evidence for this [tradition] in Scripture”; Qafīḥ, *Mishnah 'im perush*, 3:152 (M. Nedarim 10:8); see also there, 3:180 (M. Nazir 4:7), 4:173 (M. Sanhedrin 6:7), 5:210 (M. Hullin 6:7). According to *Mishneh Torah*, *hilkhot shevu'ot* 6:1–2, this law is known *mi-pi ha-kabbalah*. Abraham Maimonides described the scriptural basis of this law as “very weak” (*da'if bi-marra*); Nissim Dana, ed., *Sefer ha-maspik le'ovdey Hashem* [in Hebrew] (Ramat Gan: Bar-Ilan University Press, 1989), 303. For this rendering of *marra*, see Blau, *Dictionary*, 655, s.v. מַרְרָא. For Maimonides's rebuttal of “heresy” regarding these laws, see Qafīḥ, *Mishnah 'im perush*, 3:152 (M. Nedarim 10:8); and *Mishneh Torah*, *hilkhot shevu'ot* 12:12. Lawrence Schiffman, “The Laws of Vows and Oaths (Num 30, 1–16) in the Zadokite Fragments and the Temple Scroll,” *Revue de Qumran* 15 (1991): 203n17, treated some of these passages. Maimonides's great-great-grandson Joshua ben Abraham ha-Nagid (1310–55) made the anti-Karaite animus here explicit; Yehuda Ratzaby, ed. and trans., *R. Jehoshua Hanagid: Responsa* [in Hebrew] (Jerusalem: Mekhon Moshe, 1989), 108 (§95). On the Karaite context of these claims, compare Shraga Abramson, “Pesakim kedumim,” *Sinai* 49, no. 10 (1961): 211–14.

51. This claim apparently abandons the Talmud's derivation of this prohibition from Exodus 29:9 (B. Sanhedrin 83b; B. Zevaḥim 17b). Qafīḥ, *Sefer ha-mizvot*, 76 (pos. 33); compare Qafīḥ, *Mishnah 'im perush*, 4:194–95 (M. Sanhedrin 9:6), 5:27 (M. Zevaḥim 2:1); and *Mishneh Torah*, *hilkhot kele ha-mikdash* 10:4.

52. Qafīḥ, *Sefer ha-mizvot*, 118 (pos. 112); compare *Mishneh Torah*, *hilkhot tum'at zara'at* 10:8, and the Short Enumeration, pos. 112.

53. Qafīḥ, *Sefer ha-mizvot*, 137 (pos. 153). Maimonides may have sought to preclude the view that the sanctification of new months is valid even if the court willfully erred, a position that Karaites

yourself” (*alekha*) in the verse commanding the appointment of a king (Deut 17:15; “You shall set a king over yourself”), adding a requirement to fear the sovereign; Maimonides placed this law with the commandment to appoint a king.<sup>54</sup> (7) *Tafsīr marwī* explains that particular sins merit certain types of capital punishment, but principle 14 excludes these traditions from the enumeration of the 613 commandments.<sup>55</sup>

The fact that the above-mentioned legal “details” appear in rabbinic literature, yet in the *Book of the Commandments* Maimonides considered them to be revealed underlines that a sharp division between biblical, enumerated commandments on the one hand and rabbinic, nonenumerated rules on the other must be discarded. As each of the above nonscriptural laws appears in this work, it might be argued that Maimonides did not consider them to be “nonenumerated.” However, this perspective does not account for the idea that there are only “three or four” nonexplicit commandments or for Maimonides’s preference to base all of the commandments on Scripture. Taken together, these cases indicate that principle 2’s claim that all nonenumerated rules are rabbinic in status does not even hold true for the *Book of the Commandments* itself!

#### THE EARLIEST REFERENCES TO PRINCIPLE 2

Although the few references to principle 2 in writings by Maimonides and his son Abraham are tricky to parse, it is evident that both understood this principle to address exceptional cases in which nonscriptural rules constitute discrete commandments. In addition to his indirect invocation of this principle in the letter to Pinḥas, Maimonides cited principle 2 while discussing certain aspects of priestly behavior in the *Book of the Commandments*. On the one hand, he counted as two distinct commandments the warning that a high priest must not render himself impure by either touching a corpse or by entering a structure that contains a corpse. Yet he listed the prohibitions forbidding a regular priest from contracting impurity by touching a corpse of a nonfamily member or by entering a building containing a corpse of a nonfamily member as a single commandment. Explaining why, in fact, there was no inconsistency in counting two commandments pertaining to the high priest but just one pertaining to the regular priest, Maimonides wrote: “They [i.e., the rabbis] imposed a duty on [*alzamū*] a regular priest [prohibiting his entry into an edifice that contains the corpse of a nonfamily member] based on an analogy from verbal congruity [*be-din gezerah shavah*] ... but we did not count [this prohibition among the 613 commandments] due to the reason that we explained in principle 2. However, we counted these two negative

criticized; see Heller, *Maimonides’ Sefer ha-Miṣvoth*, 73n15; and Saul Lieberman, *Tosefta ki-fshutah: A Comprehensive Commentary of the Tosefta* [in Hebrew] (New York: Jewish Theological Seminary of America, 1988), 5:1037 l. 2. For a similar phenomenon, see Aharon Shweka, “The Tablets of Stone, the Law, and the Commandment” [in Hebrew], *Tarbiz* 81, no. 1–4 (2013): 346–48.

54. Qafih, *Sefer ha-miṣvot*, 146 (pos. 173). He labeled this law a *naql* in the *Commentary*; Isaac Shailat, ed. and trans., *Tikkun mishnah* (Jerusalem: Maaliyot, 2002), 163 (M. Horayot 3:8); compare Qafih, *Mishnah ‘im perush*, 3:269–70 (M. Sotah 7:6).

55. Qafih, *Sefer ha-miṣvot*, 50–51 (prin. 14).

commandments [*lavin*] [regarding a high priest] due to the two explicit [scriptural] statements [*naṣṣayn*], 'Do not enter' and 'Do not impurify' [Lev 21:11].<sup>56</sup> In this passage, Maimonides ascribed the prohibition against a regular priest entering a structure holding such a corpse to rabbinic reasoning through one of the thirteen rabbinic modes of inference, yet in the *Mishneh Torah* he described this prohibition as biblical in status, writing, "Any priest who defiles himself for a corpse ... is subject to the penalty of flagellation. ... This holds true [*ve-'eḥad*] whether he touches the body, overshadows it [*ha-ma'ahil*], or carries it ... as it is written, 'None shall defile himself for the dead among his people' [Lev 21:4]. ... In like manner, if he enters a house where uncleanness penetrated ... he is subject to flogging."<sup>57</sup> It is unlikely that Maimonides changed his mind about the status of the prohibition against a regular priest impurifying himself by entering a structure containing a corpse between writing the *Book of the Commandments* and the *Mishneh Torah*. This is because the spread of impurity in a structure occurs no matter who it renders impure (Num 19:14–15; *Mishneh Torah*, *hilkhot tum'at met* 1:10–11). In the case of a regular priest, Maimonides's reference to "the reason that we explained in principle 2" indicates, then, that he neglected to enumerate a separate negative commandment concerning the transmission of impurity within a building because it lacks a supporting verse, not because this prohibition is of rabbinic status. For Maimonides, the upshot is that a regular priest who becomes impure in this manner violates a divine prohibition but only incurs a single set of lashes, while a high priest incurs two (as can be seen in *Mishneh Torah*, *hilkhot 'avel* 3:1–4, 6–7). If so, the third-person plural verb at the outset of the above passage in the *Book of the Commandments* (*alzamū*) probably refers either to the rabbinic transmission of this Sinaitic law or to their use of the *middot* to identify it.<sup>58</sup>

Abraham Maimonides frequently referred to the nature and scope of revelation in his responses to the challenges that Daniel ben Sa'adiah (fl. 13<sup>th</sup> century) posed to the *Book of the Commandments*. Abraham asserted that the list of enumerated commandments includes only express scriptural passages (*mansūṣ*) and what is "entailed by" (*yalḥaq*) them.<sup>59</sup> Like his father, Abraham accepted that

56. *Ibid.*, 260 (neg. 168).

57. *Mishneh Torah*, *hilkhot 'avel* 3:1, 3; trans. based on Abraham Hershman, *The Code of Maimonides: Book Fourteen, The Book of Judges* (New Haven, CT: Yale University Press, 1977), 170. For two variant readings of this passage, see Judah ben Samuel Rosanes, *Derekh miṣvotekha* (Warsaw: Y. Goldman, 1930), 9b–10a; and Elyakim ben Yizḥak Gatinyo, *Bet Yizḥak* (Salonika: n.p., 1792), 144b. Qafih, *Sefer ha-miṣvot*, 260n32, adopted Gatinyo's reading. Compare also Qafih, *Sefer ha-miṣvot*, 282 (neg. 208) and *Mishneh Torah*, *hilkhot nezirut* 5:18.

58. The consistency of Maimonides's presentations of this topic further facilitates reading the conclusions of the *Book of the Commandments* into the *Mishneh Torah*; see similarly Nachum L. Rabinovitch, ed., *Mishneh Torah ... Book XIV—Sefer Shoṭtim* [in Hebrew] (Jerusalem: Maaliyot, 2011), 3:76–77. It is possible, but less likely, that *alzamū* means something closer to "deduced," akin to how the root *l-z-m* functions in Arabic logical works. If so, Maimonides would be saying that the rabbis deduced this prohibition, not that they created it.

59. Goldberg, *Maasé nissim*, 6 (§1). This last phrase may denote the "three or four" exceptions or the *tafsīr marwī*, but I am unaware of a Maimonidean usage of the root *l-ḥ-q* that may illuminate Abraham's claim.

some rabbinic dicta constitute Sinaitic traditions but do not qualify as distinct commandments. He thus explained that a given “commentary” (*sharḥ*) on revelation may not constitute a distinct commandment, even though it may be “a verse [*naṣṣ*] of the Torah, a verse stated [by] a prophet, a *tafsīr marwī*, or [was] extracted [*mustanbat*] through reasoning [*qiyās*].”<sup>60</sup> Similarly, he contended that a certain rabbinic gloss should not be enumerated as a distinct commandment, “even if it is conceded [*sullima*] that [the gloss] is a verified interpretation [*sharḥ muḥaqqaq*] and not a [conclusion reached merely] on the basis of its support [*isnād*].”<sup>61</sup>

Among Abraham’s responses to Daniel, two passages confirm that Abraham understood principle 2 as a guideline that accounts for the omission of nonexplicit rules of biblical status from the enumeration of the 613 commandments, not as a claim that nonenumeration of a law indicates its rabbinic status. Daniel had noted an apparent inconsistency in that Maimonides had counted as distinct commandments the obligation to offer the paschal sacrifice and the supplemental opportunity to offer that sacrifice if the initial obligatory date was missed (known as *pesaḥ sheni*), yet he omitted from his enumeration the commandments pertaining to the consumption of this sacrifice with respect to *pesaḥ sheni* (e.g., not to eat it raw). Abraham accepted that these prohibitions apply in both cases; after all, it is clear from Numbers 9:12 that the second sacrifice is to be treated identically to the first. But Abraham suggested that his father excluded these rules from the enumerated commandments because the Talmud (B. Pesaḥim 95a) identifies them by means of reasoning (*qiyās*). In keeping with principle 2, he asserted that the enumeration only includes “explicit” (*mafṣūḥ*) laws, not laws known by *qiyās* that the rabbis did not label *guf ha-torah*,<sup>62</sup> whether they are of biblical or rabbinic status.

In a second instance, Abraham wrote that although the rabbis interpreted “Do not eat upon the blood” (Lev 19:26) to prohibit a variety of unrelated acts,<sup>63</sup> at least some of which are of biblical status, this phrase only generates a single enumerated commandment, in line with principle 2’s insistence that “a biblical verse does not leave the realm of [*voze mi-yede*] its *peshat*.”<sup>64</sup> In this context, *peshat* probably denotes an explicit verse, along the lines of the Arabic terms *mansūṣ* and *mafṣūḥ* that Abraham used in this context.<sup>65</sup>

60. Goldberg, *Maasé nissim*, 7 (§1). Compare his threefold division between laws that are “written, transmitted, or derived through (*mustakhrājan bi-*) *qiyās*”; there, 22 (§3).

61. *Ibid.*; “verified interpretations” may denote philological readings of Scripture. Abraham made this comment concerning the reading of Exodus 18:20 in B. Bava Mezi’a 30b.

62. *Ibid.*, 80 (§7). Note Abraham’s almost inverse conclusion, that two prohibitions that might have been derived (*tastamidd*) from each other constitute distinct commandments because Scripture mentions them separately; Goldberg, *Maasé nissim*, 47–48 (§4). Goldberg’s transcription of this passage contains small errors; see Oxford MS. Huntington 185, 163b–164a.

63. See, e.g., B. Sanhendrin 63a.

64. Goldberg, *Maasé nissim*, 48 (§4). Translation of this phrase follows Cohen; see his helpful discussion in *Opening the Gates of Interpretation*, 495–99.

65. This is supported by the complex understanding of Leviticus 19:26 in the *Book of the Commandments*, which Abraham did not mention here. Qafih, *Sefer ha-mizvot*, 37–38, 277–78 (prin. 9, neg. 195); see Herman, “Systematizing God’s Law,” 321–24. Cohen argued that *peshat* constitutes the central issue in principle 2 and that non-*peshat* readings of Scripture are of rabbinic status; see the



## Principle 2 in Maimonides's *Book of the Commandments*

To sum up, the three references to principle 2 in writings by Maimonides and his son Abraham confirm that this principle excludes rules that lack explicit scriptural support from the enumeration of the commandments. Neither of these figures cited it to assert that a nonenumerated law is of rabbinic status. Rather, laws may be omitted from the enumeration either because they were derived by the rabbis or because they are revealed legal “details” included in larger commandment-units.

### TOWARDS A NEW UNDERSTANDING OF MAIMONIDES'S APPROACH TO EXTRASCRIPURAL LAW

As is clear from the above analysis, Maimonides determined rabbinic literature to be a corpus that contains not only laws generated by the rabbis but Sinaitic traditions as well. Those of the latter category include far more than the “three or four things” that lack scriptural support. This observation should put to rest the claim that Maimonides approached rules in rabbinic literature in a uniform manner.<sup>66</sup> Blidstein captured the subtleties of Maimonides's views when he wrote that, for him, “midrash does not produce Torah-law. ... It will produce rabbinic law, and it will confirm revealed interpretation.”<sup>67</sup>

Several scholars have expressed frustration with Maimonides's failure to provide guidelines for determining when rabbinic literature upholds Sinaitic tradition and when it creates new law.<sup>68</sup> Maimonides's seeming silence on this problem has generated conflicting conjectures. While Neubauer speculated that interpretations that violate Scripture's *peshat* must be received traditions for Maimonides,<sup>69</sup> Shimshon Ettinger concluded that Maimonides considered Sinaitic

appendix to this essay. As I read it, Abraham referenced Scripture's *peshat* in order to explain the non-enumeration of the laws associated with Leviticus 19:26, not to assert that these laws are necessarily rabbinic in status. Cohen also suggested that Abraham “abandoned” his father's view of *peshat*; *Opening the Gates of Interpretation*, 390n19. He did not cite this passage.

66. E.g., Harris, *How Do We Know This*, 88: “The second principle ... states that all laws derived from the exegetical principles of the rabbis are of rabbinic authority ... rather than of scriptural authority”; and Mordechai Z. Cohen, *The Rule of Peshat: Jewish Constructions of the Plain Sense of Scripture and Their Christian and Muslim Contexts, 900–1270* (Philadelphia: University of Pennsylvania Press, 2020), 240: “Only laws stated in Scripture are of biblical authority, whereas all others derived ... through the midrashic hermeneutical rules must be classified as rabbinic.” Likewise, see Menachem Elon, *Jewish Law: History, Sources, Principles*, trans. Bernard Auerbach and Melvin J. Sykes (Philadelphia: The Jewish Publication Society, 1994), 1:211.

67. Blidstein, “Where Do We Stand,” 14. Similarly, Blidstein concluded that for Maimonides, “all [of the 613 commandments] were interpreted at Sinai, but not all interpretation is Sinaitic”; “Maimonides on ‘Oral Law,’” *The Jewish Law Annual* 1 (1978): 113. Maimonides's tendency to transform some rabbinic midrash into *tafsir marwī* was perhaps first noted in Michael Guttman, “Die Bedeutung der Tradition für die halachische Biblexegese bei Maimonides,” *Monatsschrift für die Geschichte und Wissenschaft des Judentums* 80, no. 3 (1936): 211–12.

68. Zvi Karl, “‘Sefer ha-mizvot’ le-ha-Rambam,” *Moznaim* 3, no. 4–5 (1935): 463; Neubauer, *Ha-Rambam 'al divre sofrim*, 88; Levinger, *Maimonides' Techniques of Codification*, 42; Davidson, *Moses Maimonides*, 132.

69. Neubauer, *Ha-Rambam 'al divre sofrim*, 89.

traditions to be those that are based on “clear ... logic” and “the plain meaning of the text.” In Ettinger’s opinion, any interpretation that violates Scripture’s apparent meaning must be an “allusion” to a law generated by the rabbis.<sup>70</sup> Similarly, Mordechai Cohen deduced that Maimonides identified as “received traditions” those elements of rabbinic literature that “adhere as closely as possible to the principles of philological-contextual analysis.”<sup>71</sup>

As the above review of the extrascriptural traditions in the *Book of the Commandments* reveals, none of these programmatic statements captures Maimonides’s understanding of the rules found in rabbinic literature that appear in this work. Scripture’s plain sense has little to do with the abovementioned rules adding extrascriptural prohibitions to the Day of Atonement or rendering the day identified as the new month sanctified even when it was based on an error. One might suggest that Maimonides’s claim that the *tafsīr marwī* contains “meanings of ambiguous expressions” was intended to cover legal data that Scripture “should” have addressed, whether the manner in which the booth should be constructed or the identity of “the fruit of the goodly tree” (Lev 23:40), to mention two of his parade examples.<sup>72</sup> Similarly, several rulings that Maimonides ascribed to the *tafsīr marwī* have significant bearing on laws of biblical status; these include a sage’s ability to release a person from vows and the identification of the precise punishment incurred by a given sin. The clear exception to this pattern is Maimonides’s designation of the transaction of marriage through money as an act of rabbinic status (at least at one point, as discussed above), showing that rulings that impact biblical law are not necessarily included in the *tafsīr marwī*.

It seems that Maimonides regarded at least two features of rabbinic literature as marking the presence or the absence of received Sinaitic traditions.<sup>73</sup> The feature that he applied most consistently is instances of biblically mandated punishment (i.e., lashes, excision, or the death penalty) for the violation of laws found in rabbinic literature.<sup>74</sup> While I have not uncovered any explicit claim linking such

70. Shimshon Ettinger, “On the Place of Logic (*Svara*) in Maimonides’ *Code*,” in *Authority, Process and Method: Studies in Jewish Law*, ed. Hanina Ben-Menahem and Neil S. Hecht (New York: Harwood Academic, 1998), 155.

71. Cohen, *Opening the Gates of Interpretation*, 431. Cohen added that Maimonides used “halakhic evidence” to find received traditions but did not clarify what he meant by this; see there, 417, 424.

72. For the latter, see Shailat, *Hakdamot ha-Rambam*, 337; compare Qafilī, *Mishnah ‘im perush*, 2:277 (M. Sukkah 3:1); and *Mishneh Torah, hilkhot shofar ve-sukkah ve-lulav* 7:2. Note the helpful—though overstated—suggestion of Isaac Leon Abensur, *Megillat Ester*, in Hillman, *Sefer hamitzvoth*, 76 (prin. 2), that Maimonides felt that all unanimously accepted interpretations of Scripture in rabbinic literature were revealed.

73. These criteria should be added to the position that rabbinic debate sometimes indicates that a scriptural interpretation is not Sinaitic; cf. Davidson, *Moses Maimonides*, 132n41. Maimonides, however, recognized that the rabbis may have disagreed regarding the existence of punishments for a given sin; Qafilī, *Mishnah ‘im perush*, 4:234 (M. Makkot 3:1).

74. Suggested in Kazes, *Kin’at sofrim*, 55 (prin. 2); see also Allegri, *Lev sameah*, 62, 70–71 (prin. 2).

punishments to biblical prohibitions,<sup>75</sup> Maimonides did declare a particular prohibition to be rabbinic in status because it does not appear in Scripture's *peshat* and its violation does not incur capital punishment.<sup>76</sup> By the same token, the *Book of the Commandments* cites rabbinic lists of sins whose violation incurs capital punishment or excision, and these verdicts are understood as confirming the biblical status of a prohibition.<sup>77</sup> Indeed, in one responsum, Maimonides asserted that the punishment of biblically prescribed flogging constitutes evidence that the prohibition in question was of biblical status.<sup>78</sup> When understood in this light, Maimonides's designation of the effectuation of marriage through document exchange as an act of biblical status becomes clear, as in the letter to Pinhas he highlighted the Talmud's imposition of capital punishment for adultery following such a transaction.

A second criterion that Maimonides may have regarded as a marker of the presence or absence of Sinaitic law in rabbinic literature is more subjective. In several passages in the *Book of the Commandments*, Maimonides inferred that a given law is of rabbinic status because of the sages' explicit use of the *middot*.<sup>79</sup> Indeed, although he maintained that the *middot* can both create and uphold law in principle 2, the default assumption of this work appears to be that the *middot* denote rabbinic law until proven otherwise. However, in the *Commentary on the Mishnah*, Maimonides was inconsistent about the status of laws linked with the *middot*. In some cases, he considered such laws to have been known by means of *naql*, tradition, while in other cases, he identified these laws as the product of *qiyās*, reasoning, or *nazar*, speculation.<sup>80</sup> Yet, the

75. Compare the claim that punishments are only imposed on "clear matters that lack ambiguity"; Qafih, *Mishnah 'im perush*, 4:177 (M. Sanhedrin 7:3).

76. Qafih, *Sefer ha-mizvot*, 16–17 (prin. 3). Compare Cohen, *Opening the Gates of Interpretation*, 327–28 (see there, n. 136), 333. For a related example, see Henshke, "Basis," 114–18; Henshke, "Al ha-meziut ha-mishpatit be-mishnat ha-Rambam," *Sinai* 92, no. 5–6 (1983): 236–37; Henshke, "Sheniyut le-'divre sofrim," *Sinai* 108, no. 1–2 (1991): 58–63; and Shimshon Ettinger, "Shete he'arot le-darkho shel ha-Rambam be-Mishneh Torah," *Sinai* 106, no. 5–6 (1990): 238–42.

77. Or even that such a prohibition constitutes a distinct commandment; Qafih, *Sefer ha-mizvot*, 76, 221, 337 (pos. 33, neg. 76, 349). This may be his argument elsewhere; there, 225, 324 (neg. 86–87, 309). Abraham Maimonides make similar use of these lists; Goldberg, *Maasé nissim*, 8–9 (§1), 23 (§3).

78. Joshua Blau, ed. and trans., *R. Moses b. Maimon: Responsa* [in Hebrew] (Jerusalem: Mekize Nirdamim, 1960), 2:574 (§310).

79. He mentioned *ribbuy* in prin. 2; Qafih, *Sefer ha-mizvot*, 13; on *gezerah shavah*, see there, 243, 260 (neg. 135, 168).

80. He equated the *middot* and *naql*; Qafih, *Mishnah 'im perush*, 5:150–51 (M. Menahot 9:7); similarly, 6:53–55 (M. Kelim 2:1). On the other hand, he compared *ribbuy* with *qiyās* there, 1:397 (M. 'Orlah 1:2), and with *qiyās* and *nazar*, there, 4:256 (M. Shevu'ot 3:6). Several appearances of the term *gezerah shavah* in the *Commentary* denote biblical law; e.g., there, 4:242 (M. Makkot 3:5), 6:672 (M. Zavim 3:1). See also Marc Herman, "Two Themes in Maimonides's Modifications to His Legal Works," *Journal of the American Oriental Society* 139, no. 4 (2019): 915. Full treatment of Maimonides's understanding of the *middot* in the *Commentary on the Mishnah* requires a separate study, which I am undertaking at present.

Maimonides also indicated that the rules relating to the signs of kosher birds, although they are the product of induction (*istiqrā'*), are biblical in status; Qafih, *Sefer ha-mizvot*, 133 (pos. 150); compare

fact that he regarded certain *middot*-linked laws to be of biblical status in the *Book of the Commandments* suggests that, guided by rabbinic literature, he alone determined when midrash creates new law and when it upholds received law,<sup>81</sup> and that he cited and manipulated rabbinic texts in order to support his positions.

#### PROVISIONAL CONCLUSIONS

The blanket statements about the rabbinic status of nonenumerated laws in principle 2 cannot be taken as Maimonides's final word, as they neither accord with the place of extrascriptural traditions in the remainder of the *Book of the Commandments* nor with the portrayal of revelation in the *Commentary on the Mishnah* and *Mishneh Torah*. My interpretation of principle 2—that it addresses only the enumeration of nonscriptural laws, not their status—suggests that Maimonides's claims about rabbinic law in that text are not decisive for him. I believe that this construal makes better sense of the data than competing interpretations, as it accounts for the “three or four” unique commandments in Maimonides's count of the 613 and for the many tradition-based laws in his writings. What is more, reading principle 2 as a passage intended to clarify nothing but Maimonides's enumeration of the commandments makes it possible to explore his approach to rules found in rabbinic literature without certain encumbrances. Maimonides thus sought to navigate between the competing assertions that revelation contained many “laws” and that Jewish law comprises exactly 613 commandments. To my mind, principle 2 seeks to associate as many commandments as possible with written revelation and cannot be taken to deem nonenumerated rules as necessarily rabbinic.

Marc Herman  
Rutgers University

the same term regarding the signs of kosher fish; Qafilh, *Mishnah 'im perush*, 6:614 (M. Niddah 6:10). For another law of biblical status that is “induced,” see there, 6:24 (intro. to M. Kelim). In the introduction to the *Commentary*, Maimonides stated that post-Mosaic jurists engaged in induction and disagreed about its conclusions, perhaps implying that induction produces rabbinic law; Shailat, *Hakdamot ha-Rambam*, 348.

81. Cohen, *Opening the Gates of Interpretation*, 306, reached a similar conclusion regarding Maimonides's role in isolating the *tafsir marwi* in rabbinic literature. Likewise, see Naftali Zvi Yehudah Berlin, *Ha'amek she'elah* (Jerusalem: Mosad HaRav Kook, 1999), 1:6, addressing Maimonides's approach to the term *halakhah le-Moshe mi-Sinai*.

## APPENDIX

THE PLACE OF *PESHAT* IN PRINCIPLE 2

This essay pays little attention to the term *peshat* in principle 2 and in Maimonides's other writings, a subject that is the focus of a learned monograph by Mordechai Cohen. Cohen homed in on a discussion within this principle where Maimonides deployed the notion of *peshat* in order to deride earlier counts of the 613 commandments. In the passage in question, Maimonides reflected on the status of laws that are included in the Sinaitic *tafsīr marwī*, and not in Scripture, and went on to disparage earlier enumerators of the commandments for having enumerated laws identified by rabbinic interpretation (*derash*). Asserting that these laws are “rabbinic without a doubt,” he claimed that they do not constitute commandments because Scripture's *peshat* (*peshateh di-kerā*) does not indicate (*yadull*) them. Including such laws in the enumeration of the commandments, he explained, violates the rule that “a biblical verse does not leave the realm of its *peshat*.”<sup>82</sup> Maimonides further declared that his own exclusion of these laws from the enumeration of the 613 commandments was not because they are “uncertain” (*ghayr mutayaqqina*)<sup>83</sup> or “untrue” (*laysa bi-ṣaḥīḥ*; or, unsound).<sup>84</sup> Rather, he asserted, laws derived using the *middot* constitute branches (*furū*) of the Sinaitic roots (*uṣūl*; or, principles); Maimonides considered the 613 commandments to be these principles.<sup>85</sup>

Naḥmanides was apparently the first to criticize Maimonides's invocation of the notion of *peshat* in this context. He understood Maimonides to claim that only Scripture's *peshat* is “true,” notwithstanding the latter's assertion that derived laws are not “untrue.”<sup>86</sup> Naḥmanides further argued that Maimonides had departed from Scripture's *peshat* when he cited received tradition (what Naḥmanides termed *kabbalah*) as support for the interpretation of particular verses that underlie several of the 613 commandments; among these was the prohibition against carrying out capital punishment on the Sabbath, a commandment based on a verse that makes no mention of such penalties (Ex 35:3).<sup>87</sup> Associating Maimonides's view with the views of the “Sadducees” (i.e., Karaites), Naḥmanides maintained that in general midrash does not contravene

82. For a thorough review of the appearances of this phrase in the Babylonian Talmud, see Cohen, *Opening the Gates of Interpretation*, 348–58.

83. I translate *ghayr mutayaqqina* as “uncertain” due to its relationship with the word *yaqīn*, which in Islamic legal theory denotes extrascriptural traditions whose authenticity is known with certainty. Medieval translators rendered this word “untrue” (*bilti 'amītiyot*); Moritz Peritz, *Das Buch der Gesetze von Moseh ben Maimum* (Breslau: von Grass, 1882), 22; Heller, *Maimonides' Sefer ha-Miṣvoth*, 8. Qafīḥ, *Sefer ha-miṣvot*, 15, offered “unclear” (*'einan berurot*).

84. Here, Ibn Ayyūb offered *bilti 'amīti*; Ibn Tibbon, *bilti 'emet*; Qafīḥ, *bilti nakhon*.

85. Qafīḥ, *Sefer ha-miṣvot*, 13–15 (prin. 2). *Furū'* denotes rabbinic law here and in the *Commentary*.

86. Charles Ber Chavel, ed., *Sefer ha-miṣvot le-ha-Rambam: 'Im hassagot ha-Ramban* (Jerusalem: Mosad HaRav Kook, 2000), 31–32 (prin. 2).

87. *Ibid.*, 40 (prin. 2). Maimonides himself cited several passages in rabbinic literature to support his reading of Exodus 35:3; Qafīḥ, *Sefer ha-miṣvot*, 330 (neg. 322).

Scripture's *peshat*, but both midrash and *peshat* are included (*nikhlalim*) in Scripture.<sup>88</sup>

Although principle 2's discussion of *peshat* only appears as part of a polemic against earlier enumerators<sup>89</sup> and not in Maimonides's more programmatic presentations of the terms *de-orayta* and *guf torah*, Mordechai Cohen contended that Maimonides's understanding of *peshat* constitutes the conceptual foundation of this principle. Cohen suggested that Maimonides regarded only those laws that emerge from the *peshateh di-kerā* to be biblical in status and claimed that Maimonides carefully distinguished between Scripture's "apparent" or "basic" meaning, which he designated using the Arabic phrase *zāhir al-naṣṣ*, and Scripture's *peshat*. According to Cohen, Maimonides used *peshat* in order to denote "what is known ... to be the meaning of the text, either because the text is explicit or because it is an interpretation from Sinai."<sup>90</sup> Borrowing language from Islamic law, he concluded that Maimonides treated any "explicitly stated" (*manṣūṣ*) text as biblical in status; for Maimonides, claimed Cohen, the category of "biblical" law includes both scriptural verses and their authentic Sinaitic interpretations.<sup>91</sup>

Cohen himself inferred that *peshat* carries a different denotation in the *Book of the Commandments* than it does in Maimonides's other writings.<sup>92</sup> I therefore find it unlikely that Maimonides employed the word *peshat* as a technical term in a consistent sense in this work. Three of the nine interpretations of Scripture that Maimonides designated as *peshateh di-kerā* in the *Book of the Commandments* are not based on rabbinic literature and therefore cannot be equated with the *tafsīr marwī*. In another three cases, Maimonides could have equally described the *peshateh di-kerā* with the term *zāhir al-naṣṣ* because the rabbinic interpretation accords with a philologically sound reading of Scripture. (Cohen attempted to account for

88. Chavel, *Sefer ha-mizvot*, 44 (prin. 2); see Yossi Erel, "Ramban's Approach toward the Plain Meaning of the Biblical Text vs. His Commitment to Halakha" [in Hebrew], *Jewish Studies, an Internet Journal* 8 (2009): 122n23; and Mordechai Cohen, "Nahmanides' Four Senses of Scriptural Signification: Jewish and Christian Contexts," in *Entangled Histories: Knowledge, Authority, and Jewish Culture in the Thirteenth Century*, ed. Elisheva Baumgarten et al. (Philadelphia: University of Pennsylvania Press, 2017), 48–49.

89. Cohen quoted Lawrence Kaplan as having made this point in oral communication; *Opening the Gates of Interpretation*, 293–94n42.

90. Cohen, *Opening the Gates of Interpretation*, 297; or *peshat* is the "text of Scripture itself, the meaning of which is self-evident in some cases, but in others is determined by the original Sinaitic interpretation" (334–35). Elsewhere, *peshat* is "the object of interpretation, not its result" (296), i.e., the interpreter interprets Scripture's *zāhir* as rendered by the *tafsīr marwī*.

91. Cohen, *Opening the Gates of Interpretation*, 489. Cohen summarized his conclusions in several essays, including "Reflections on the Conception of *Peshuto shel Miqra* at the Beginning of the Twenty-First Century" [in Hebrew], in *To Settle the Plain Meaning of the Verse*, ed. Sara Japhet and Eran Viezel (Jerusalem: Mosad Bialak, 2011), 40–56; and "Emergence of the Rule of *Peshat* in Medieval Jewish Bible Exegesis," in *Interpreting Scriptures in Judaism, Christianity, and Islam: Overlapping Inquiries*, ed. Mordechai Z. Cohen and Adele Berlin (New York: Cambridge University Press, 2015), 219–22.

92. See Cohen, *Opening the Gates of Interpretation*, 18; see also 304n71: "As a rule, Maimonides does not invoke the rule of *peshat* explicitly with this terminology in his other major writings." For treatment of those writings see there, 291, 296n50, 386–89, 500–509.

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these two points by claiming that *peshat* denotes any correct reading of Scripture, but this interpretation may make this category too broad to be of use.)<sup>93</sup> Cohen laudably demonstrated that Maimonides understood that the *tafsīr marwī* controls Scripture's meaning in matters of Jewish law, but, in my assessment, he exaggerated the role of *peshat* in the *Book of the Commandments*.<sup>94</sup> All that can be said is that in that work and across Maimonides's writings *peshat* sometimes denotes Scripture as rendered by the *tafsīr marwī* and sometimes does not.

Having claimed that principle 2 sets forth the “cardinal”<sup>95</sup> rule that only *peshat*-based laws may be enumerated, Cohen must adopt what I consider to be a mischaracterization of the letter to Pinḥas. Given that principle 1 asserts that only scriptural laws, and not rabbinic laws, may be enumerated in the count of the 613 commandments, and that Cohen construed principle 2 to convey what he called “the rule of *peshat* primacy,”<sup>96</sup> he is forced to treat the “three or four” nonexplicit commandments mentioned in Maimonides's letter to Pinḥas as “exceptions” to principle 2.<sup>97</sup> In my view, principle 2's sustained discussion of the claim that the terms *de-'orayta* and *guf torah* signal the presence of commandments that are Sinaitic though not explicit in Scripture belies the idea that the “three or four things” are “exceptions” to principle 2. I understand principle 2 to address the rare commandments that are inconsistent with the rule stated in principle 1 that only scriptural laws may be counted among the 613. For these reasons, I refrain from analyzing *peshat* in my consideration of Maimonides's scriptural hermeneutics in favor of the more persistent phrase *tafsīr marwī*. For Maimonides, the *tafsīr marwī* serves as the authoritative guide to Scripture, as Cohen emphasized. It also teaches numerous nonscriptural laws, some of which constitute discrete commandments. These exceptional commandments are the subject of principle 2.

93. *Ibid.*, 306–7.

94. Cohen, *ibid.*, 318–20, likewise erred in conflating the non-*peshat* readings of Leviticus 19:14 in neg. 299 (Qafīḥ, *Sefer ha-miḥvot*, 320–21) with *furū'* (i.e., rabbinic law). Maimonides did not use the term *furū'* to denote non-*peshat* readings of Leviticus 19:14, which, as Cohen noted (320n111), Maimonides elsewhere considered to be biblical in status. Friedberg has offered other criticisms of Cohen's approach and another interpretation of Maimonides's use of *peshat*; *Crafting the 613 Commandments*, 339–45.

95. Cohen, *Opening the Gates of Interpretation*, 14, 358.

96. *Ibid.*, 19 and throughout.

97. For example, Cohen, *Opening the Gates of Interpretation*, 335–46. See similarly Davidson, *Moses Maimonides*, 132n41 (but Davidson adopted a position close to my own there, 176).